

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEITH T. CLARK,

Plaintiff,

DECISION AND ORDER
09-CV-841A

v.

MICHAEL J. ASTRUE, Commissioner,
Social Security Administration,

Defendant.

The above-referenced case was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1). On January 13, 2011, Magistrate Judge Foschio filed a Report and Recommendation, recommending that defendant's motion for judgment on the pleadings be denied, that plaintiff's motion for judgment on the pleadings be granted, and that the matter be remanded for a calculation of benefits.

Defendant filed objections to the Report and Recommendation on January 26, 2011. Plaintiff filed a response to defendant's objections on February 7, 2011. The Court has deemed the matter submitted on papers pursuant to Rule 78(b) of the Federal Rules of Civil Procedure.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Report and Recommendation to which

objections have been made. Upon a *de novo* review of the Report and Recommendation, and after reviewing the submissions, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, and for the reasons set forth in Magistrate Judge Foschio's Report and Recommendation, defendant's motion for judgment on the pleadings (Dkt. No. 7) is denied, and plaintiff's motion for judgment on the pleadings (Dkt. No. 10) is granted. The case is remanded to the Commissioner for calculation of benefits.

The Clerk of the Court is directed to close this case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: February 22, 2011